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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/342,719	06/29/1999	DONALD C. ROE	7590Q	6995

27752 7590 09/25/2009

THE PROCTER & GAMBLE COMPANY
Global Legal Department - IP
Sycamore Building - 4th Floor
299 East Sixth Street
CINCINNATI, OH 45202

EXAMINER	
ANDERSON, CATHARINE L	

ART UNIT	PAPER NUMBER
3761	

MAIL DATE	DELIVERY MODE
09/25/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/342,719	ROE ET AL.	
	Examiner	Art Unit	
	Lynne Anderson	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *14 July 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *28-32,34-44,47,48,58-60 and 64-66* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *28-32,34-44,47,48,58-60 and 64-66* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *7/14/09*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Terminal Disclaimer

1. The terminal disclaimer does not comply with 37 CFR 1.321(b) and/or (c) because:

2. An attorney or agent, not of record, is not authorized to sign a terminal disclaimer in the capacity as an attorney or agent acting in a representative capacity as provided by 37 CFR 1.34 (a). See 37 CFR 1.321(b) and/or (c).

Response to Arguments

3. Applicant's arguments filed 14 July 2009 have been fully considered but they are not persuasive.

4. In response to the applicant's argument that Mahgerefteh does not disclose an actuator within the diaper, it is noted that Mahgerefteh discloses an electrical device that controls an alarm, and therefore comprises an actuator. It is further noted that Mahgerefteh is not relied upon for teaching the claimed responsive system, since that is disclosed by Hashimoto. Mahgerefteh is rather relied upon for the teaching of locating a responsive system inside the diaper.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 28-32, 58, and 64-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hashimoto et al. (5,681,297) in view of Mahgerefteh et al. (5,570,082).

7. Hashimoto discloses all aspects of the claimed invention with the exception of the waste contamination area and mass values, and the responsive system being located between the diaper backsheet and the wearer. Hashimoto discloses a disposable article, as shown in figure 8, comprising a responsive system including a sensor 109 that detects in input when fecal waste is excreted and an actuator 108b that delivers a composition when the sensor detects an input, as disclosed in column 3, lines 42-60. Hashimoto further discloses a method of enhancing removability of waste by providing and using the article, as disclosed in column 2, lines 1-12. The composition is stored within, and in contact with, the diaper during the washing of the wearer of the diaper. The diaper comprises a topsheet 122 and leg cuffs 121a, as shown in figures 5 and 7, which contact the composition during the process of washing, as disclosed in column 3, lines 36-40, and therefore hold the composition storage.

8. It would have been obvious to one of ordinary skill in the art at the time of invention to provide the composition of Hashimoto with a Waste Contamination Area of less than 15 cm^2 and a Waste Contamination Mass of less than 14 mass units, since it has been held that where the general conditions of the claim are disclosed in the prior art (i.e. the desire to enhance the removability of and to remove fecal waste), finding the optimum or workable ranges involves only routine skill in the art. *In re Aller,* 105 USPQ 233.

9. Mahgerefteh teaches a diaper having a responsive system comprising a sensor and actuator located within the diaper, as shown in figure 1. Providing the responsive system within the diaper as opposed to outside of the diaper results in a more cost-effective system, as disclosed in column 1, lines 32-43. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the article of Hashimoto with a responsive system that is located within the diaper, as taught by Mahgerefteh, to provide a more cost-effective system.

10. Claims 34-37, 40-44, 47-48, and 59-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hashimoto et al. (5,681,297) in view of Mahgerefteh et al. (5,570,082), and further in view of Jones et al. (5,482,714).

11. Hashimoto, as modified by Mahgerefteh, discloses all aspects of the claimed invention with the exception of the composition comprising a feces modifying agent, a skin care composition, and a thickener. The composition of Hashimoto is provided to cleanse fecal waste from the wearer of the article, as disclosed in column 3, lines 54-60.

12. Jones teaches a composition for cleansing skin that has contacted fecal waste, the composition comprising a silicone oil (see column 4, lines 35-44), Al_2O_3 (see column 3, line 26), and a thickener (see column 3, lines 13-14). The composition provides a skin care benefit and protects the skin from irritation caused by fecal waste, as disclosed in column 1, lines 49-56.

13. It would therefore be obvious to one of ordinary skill in the art at the time of invention to include a skin care composition in the cleansing composition of Hashimoto, as taught by Jones, to protect the skin from irritation by fecal waste.

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 28 and 58 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 20 of U.S. Patent No. 6,093,869. Although the conflicting claims are not identical, they are not patentably distinct from each other because optimization of the Waste Containment Area and Mass would be obvious.

3. Claims 28 and 58 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 15 of U.S. Patent No. 6,186,991.

Although the conflicting claims are not identical, they are not patentably distinct from each other because optimization of the Waste Containment Area and Mass would be obvious.

4. Claims 28 and 58 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 11 of U.S. Patent No. 6,384,296. Although the conflicting claims are not identical, they are not patentably distinct from each other because optimization of the Waste Containment Area and Mass would be obvious.

5. Claims 28, 34, 42, 44, and 58 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 12, and 14 of U.S. Patent No. 6,395,955. Although the conflicting claims are not identical, they are not patentably distinct from each other because optimization of the Waste Containment Area and Mass would be obvious.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynne Anderson whose telephone number is (571)272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tatyana Zalukaeva/
Supervisory Patent Examiner, Art Unit 3761

/L. A./
Examiner, Art Unit 3761